

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Mediacom Minnesota LLC)	
)	CSR 6010-E
Petition for Determination of Effective)	
Competition in St. James, Minnesota)	
(CUID MN0312))	

MEMORANDUM OPINION AND ORDER

Adopted: December 20, 2005

Released: December 22, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Mediacom Minnesota LLC ("Mediacom") has filed with the Commission a petition pursuant to Sections 76.7 and 76.905(b)(1) & (2) and 76.907 of the Commission's rules seeking a finding of effective competition in the City of St. James, Minnesota.¹ Mediacom alleges that its cable system serving the City is subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended ("Communications Act")² and therefore exempt from cable rate regulation because of competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. ("DirecTV") and DISH Network ("DISH"). The City of St. James filed an opposition to which Mediacom replied.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 76.905 of the Commission's rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ Based on the record in this proceeding, Mediacom has met this burden.

II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to

¹See 47 C.F.R. §§ 76.7(a)(1) and 76.905(b)(1) & (2). St. James is certified to regulate basic cable service rates.

²See 47 U.S.C. § 543(a)(1).

³47 C.F.R. § 76.906.

⁴47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.⁶

4. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁷ Mediacom has provided evidence of the advertising of DBS service in the news media serving the City.⁸ The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest, MVPD provider.⁹ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in the City are DBS subscribers, we conclude that the population of the City may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer at least 12 channels of video programming, including at least one non-broadcast channel.¹⁰ We find that Mediacom has demonstrated that St. James is served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Mediacom also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in the City, that there exists no regulatory, technical, or other impediments to households within the City taking the services of the DBS providers, and that potential subscribers in the City have been made reasonably aware of the MVPD services of DirecTV and DISH.¹¹ St. James filed an opposition that "accepts (without conceding) that the two DBS providers satisfy the first prong of the competing provider test."¹² Accordingly, we find that the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Mediacom asserts that it is the largest MVPD in the City. Mediacom sought to determine the competing provider penetration in St. James by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers in St. James on a zip code plus four basis.¹³

6. In opposition, St. James' alleges that Mediacom has not met its burden of demonstrating that the number of households subscribing to DBS providers exceeds 15 percent of the households in St. James.¹⁴ More specifically, St. James questions the accuracy and validity of the data submitted by Mediacom because only summary data was provided, rather than the underlying data for the SkyTrends'

⁶47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷*See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁸*See* Mediacom Petition at 4 and Exhibit A.

⁹ *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, 20 FCC Rcd 2755, 2792 at ¶¶ 54-55 (rel. Feb. 4, 2005).

¹⁰*See* 47 C.F.R. § 76.905(g). *See also* Mediacom Petition at 4-5 and Exhibits B, C, and D.

¹¹*See* Mediacom Petition at 3.

¹² Opposition at 1.

¹³ Mediacom Petition at 6 and Exhibits F and F-2.

¹⁴ Opposition at 1-2.

report that would indicate which zip codes were used in rendering calculations.”¹⁵ Thus, St. James asserts that the SkyTrends’ data is not precise enough to verify that the DBS subscribers reside in the City rather than adjacent communities.”¹⁶ St. James contends that DBS subscribership is high because Mediacom does not provide service to outlying areas of the City limits.¹⁷ St. James also argues that it is located in Watonwan County and the City is surrounded by unincorporated areas within Watonwan County, but the zip codes for these areas, which are not served by Mediacom, are the same as the City of St. James.¹⁸ Moreover, St. James argues that DBS subscribership is significantly greater outside of the City limits than within the City limits. Thus, St. James questions whether the SkyTrends’ data correctly reflects DBS subscribers that reside “within the City or within an unincorporated territory within Watonwan County.”¹⁹ Therefore, without the back-up SkyTrends’ data, St. James cannot verify the number of DBS subscribers and the alleged 33.39 percent DBS penetration rate. Finally, St. James argues that there are no other MVPD’s serving the City than Mediacom and the two DBS proviers.²⁰

7. In reply, Mediacom argues that the Commission has accepted SkyTrends’ data in numerous proceedings for purposes of demonstrating effective competition.²¹ Mediacom also argues that St. James does not understand the SkyTrends’ ZIP+4 process, so Mediacom has provided an explanation of the SkyTrends’ ZIP+4 process in an exhibit to its reply.²² Mediacom asserts that the SkyTrends Report is designed to determine DBS subscribers located within a particular franchise area. Finally, Mediacom argues that the Commission has already considered and rejected St. James’s argument that effective competition should be denied where there is not head-to-head competition between the cable operator and DBS providers in all areas of the franchise.²³

8. We reject the City’s challenge to the methodology of the SkyTrends Report. The Commission has repeatedly accepted SkyTrends’ subscriber reports on behalf of the DBS providers in satisfaction of Section 76.907(c) of the Commission’s rules.²⁴ Pursuant to this provision, cable operators may request subscriber information from competitors for effective competitive purposes, however, this information may be limited to numerical totals.²⁵ Mediacom provided St. James with the relevant portion of the SkyTrends report identifying the total number of DBS subscribers allocated to the City, as well as a copy of the methodology detailing how SkyTrends reached this result.²⁶ Mediacom also provided a summary of the SkyTrends methodology involved in SkyTrends’ ZIP+4 process.²⁷ St. James presents no

¹⁵*Id.* at 2.

¹⁶*Id.* at 2-3.

¹⁷*Id.*

¹⁸Opposition at 2.

¹⁹*Id.* at 2-3.

²⁰*Id.* at 3.

²¹Mediacom Reply at 2-3.

²²*Id.* at 3.

²³*Id.* at 3-4.

²⁴See 47 C.F.R. § 76.907(c); see, e.g., *Cablevision of Paterson*, 17 FCC Rcd 17239 (2002); *Mountain Cable Company d/b/a Adelphia Cable Communications*, 14 FCC Rcd 13994, 13997 n.26 (1999).

²⁵47 C.F.R. § 76.907(c).

²⁶Mediacom Petition at F and F-2; Reply to Opposition. We also note that the SkyTrends’ Report states that the DBS subscribership figures are based on the cable franchise area.

²⁷*Id.* at 2.

evidence to call into question the reliability of the SkyTrends' report submitted by Mediacom. Accordingly, we will accept the number of St. James DBS subscribers indicated in Mediacom's petition.

9. In addition to its concerns regarding the subscriber information provided by Mediacom, St. James argues that our analysis should consider that DBS service is higher in outlying areas of the City that Mediacom does not serve. We have previously rejected such assertions since "actual head-to-head competition is not a requirement of the competing provider test, nor, standing alone, indicative of franchise area redefinition."²⁸

10. Turning to the competitive penetration level in St. James, Mediacom asserts that it is the largest MVPD because its subscribership exceeds the aggregate DBS subscribership in St. James.²⁹ Mediacom submitted Census 2000 data indicating that there are 1,845 households in St. James.³⁰ Based on the aggregate 616 DBS subscribers in St. James, we calculate that the competing provider penetration rate in St. James is 33.39 percent.³¹ We find that Mediacom has demonstrated that the number of households subscribing to programming services offered by providers, other than the largest MVPD, exceeds 15 percent of the households in St. James. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that its cable system serving the City of St. James is subject to effective competition.

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petition for a determination of effective competition filed in the captioned proceeding by Mediacom Minnesota LLC **IS GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification of St. James, Minnesota to regulate basic cable service rates **IS REVOKED**.

13. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.³²

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau

²⁸See *Cablevision of Paterson*, 17 FCC Rcd at 17241.

²⁹Mediacom Petition at 6 and Exhibits E, F, and F-2.

³⁰*Id.* and Exhibit G.

³¹*Id.* (616 DBS subscribers ÷ 1,845 St. James households = 33.39%).

³²47 C.F.R. § 0.283.